

SPECIAL CIVIL APPLICATION No 12516 of 2001

Hon'ble MR.JUSTICE A.L.DAVE

The petitioner came to be detained by virtue of an order dated 23.8.2001 passed by the Commissioner of Police, Surat City, Surat in exercise of power under Section 3 of the PASA Act. The petitioner seeks to

challenge the said order by this petition under Article 226 of the Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered two registered offences against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of three anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate for the petitioner Mr.Kapadia submitted that there is nothing to indicate that there was disturbance to public health when the registered offences were committed. So far as statements are concerned, he submitted that there is no material to indicate that the power was properly exercised by the detaining authority under Section 9(2) of the PASA Act after undertaking due enquiry and verification regarding genuineness of the fear expressed by the witnesses and the need for use of power under Section 9(2) of the PASA Act, in comparison to the right of the detenu envisaged under Art. 22 of the Constitution of India. He has placed reliance on the decision of this Court in Bai Amina Vs. State of Gujarat, reported in 22 GLR 1186 and subsequent judgements wherein the said decision has been followed.

3.1 So far as registered cases are concerned, he submitted that in Criminal case No. 5401/2001, the document which is supplied, namely - the complaint, is an incomplete and illegible document and therefore, the petitioner's right of making an effective representation is affected and it cannot form ground for passing an order of detention. So far as first registered offence, namely Criminal case No. 483/2001 is concerned, he has contended that it is a stale incident of about more than 3 month's old and therefore the statements and the other offences cannot be looked into because of the reasons stated above. This offence cannot form the basis for passing the order as live-link between the activity of the petitioner and the order is snapped.

4. Learned Assistant Government Pleader Mr. S.S. Patel has opposed to this petition.

5. Having regard to the statements of anonymous witnesses recorded on 5.8.2001, 6.8.2001 and 8.8.2001, the verification appears to have been done by the detaining authority on 20.8.2001, wherein the witnesses have simply reiterated the statements before the sponsoring authority. The satisfaction recorded by the detaining authority is not on the basis of any cogent material. As observed by the Court in Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1981 GLR 1186, the authority is expected to consider the general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be enquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alie, to protect himself against the falsity of his version being exposed by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu.

5.1 In order to meet with this requirement, the detaining authority would be required to undertake a further exercise in addition to examining the anonymous witnesses. There is nothing to indicate that such an exercise is undertaken. A witness who has stated something before the sponsoring authority is bound to stick to his version before the detaining authority when he is summoned for verification, but what is stated by him is correct and genuine or not can be tested only after his version is cross-checked through other sources by undertaking further exercise. That having not been done, the subjective satisfaction cannot be said to have been recorded on the basis of any material and therefore, there is improper exercise of power under Section 9(2) of the PASA Act.

5.2 So far as the offence registered at Cr.No. 5401/2001 is concerned, the copy of the complaint is blank in certain regard. It has to be accepted that the right of the detenu of making an effective representation is affected. So far as offence registered vide CR No.483/2001 is concerned, it relates to an offence registered on 25th May, 2001, whereas the detention order is passed on 23rd Aug., 2001 i.e. nearly after 3 months. In light of the above discussion, since the other registered offence and the statements cannot be looked

into, the offence becomes stale and continuity in the activity is not established, which would have a direct impact on the need for the detaining authority to exercise powers under Section 3 of the PASA Act. The continued detention of the detenu therefore, is vitiated.

6. The petition is therefore, allowed. Order of detention dated 23rd August, 2001 passed by the Commissioner of Police, Surat is quashed and set aside. Detenu Sharadbhai Bhanabhai Rathod be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L. Dave, J.)

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